89-1248

Supreme Court, U.S.
FILED
OCT 31 1989
JOSEPH F. SPANIOL, JR.
CLERK

NO.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1989

HELMUT A.J. RAMPP

Petitioner

VERSUS

UNITED STATES OF AMERICA

RESPONDENT

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

HELMUT A.J. RAMPP
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PH.: 717/275-3112
PETITIONER

QUESTIONS PRESENTED FOR REVIEW

1. Whether the due process clause of the Fifth Ammendment to the United States Constitution permits the denial of petitioners Petition for Grant of Absolute Immunity when criminal prosecution(s) were possible and/or pending.

2. Whether a reviewing court may rule in favor of the lower court when there had been no timely response filed by the respondent United States of America.

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1989

HELMUT A.J. RAMPP, PETITIONER

VERSUS

UNITED STATES OF AMERICA, RESPONDENT

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUT

Helmut A.J. Rampp, petitions for a writ of certiorari to review the decision of the United States Court of Appeals for the Third Circut, which affirmed the decision of the United States District Court for the Middle District of Pennsylvania denying petitioners' petition for grant of absolute immunity. The petition had been filed as the result of an impending action by the Department of the Treasury, Internal Revenue Service.

OPINIONS BELOW

The Third Circut Panel decision affirming the District Court's denial of the Petition for Grant of Absolute Immunity is reprinted as Appendix "A".

RULES AND STATUTES IMPLICATED

The specific rules and statutes implicated in petitioners case are U.S. Constitution ammendment Five and the Federal Rules of Civil Procedure rule 12(a).

JURISDICTION

The panel decision of the United States Court of Appeals for the Third Circut is dated 5 July 1989. Petitioner filed a petition for rehearing/rehearing en banc on or about 27 July 1989. The petition for rehearing was denied on 17 August 1989. A stay of mandate was issued and granted on 28 August 1989. Mandate was stayed until 23 September 1989. This petition is timely having been filed within 60 days of the entry of mandate .

Jurisdiction is present under 28 U.S.C. § 1254 (1).

STATEMENT OF THE CASE

On 25 October 1988 petitioner Helmut A.J. Rampp and others filed a petition for grant of absolute immunity in the United States District Court for the Middle District of Pennsylvania, seeking to prevent any civil and/or criminal prosecution(s) by the United States of America, Department of the Treasury, Internal Revenue Service that may be recommended by Special Agent Ben E. Wylam, a criminal investigator of the I.R.S..
The respondent, United States of America, did not timely respond to the service of the petition . Subsequently, Rampp was summoned out of the Continental United States to the bedside of his natural mother, a resident of West Germany. In his absence, the court did issue an Order denying the petition.

Upon petitioner Rampps' return on 8 March 1989, he filed a motion for reconsideration to the court citing extraordinary circumstances. The court, denied reconsideration on 16 March 1989. On 21 March 1989, Petitioner appealed to the Third Circut Court. The Third Circut Court affirmed the lower court order, by order dated 18 July 1989. Rehearing was sought on 27 July 1989 and denied on 17 August 1989.

REASONS FOR GRANTING WRIT

The first question raised on the facts of the case is, given the extraordinary circumstances, was petitioner denied/deprived of his due process right and/or other statutory protections? The case records clearly reflect that the respondent failed to timely answer the petition. The District Court has abused its discretion considering the untimely response of the respondent and the denial of petitioners motion for reconsideration.

The absence of petitioner when the lower court issued its order denying the petition for absloute immunity, and the subsequent denial of reconsideration, did effectively deny/deprive petitioner of fair notice and opportunity to reply and/or defend. The Fed.R.Civ. P., rule 12(a), mandates that the U.S. as a party, shall answer within 60 days, whereupon plaintiff shall serve a reply within 20 days thereof. The respondent, United States of America, has alleged and the Courts have agreed that the petition for immunity is moot, as there had/has been no recommendation(s) of either civil or criminal prosecution(s). While that was at those times true, that is no longer the case. Criminal prosecution has been since recommended on 27 December 1989.

CONCLUSION

For the reasons stated, petitioner respectfully petitions this Court to grant a writ of certiorari to review the decisions of the United States Court of Appeals for the Third Circut.

Respectfully submitted,

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BY: Helmut A.J. Rampp

APPENDIX "A"

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUT

NO. 89-5259

HUNLOCK SAND & GRAVEL INC.,
RAMPP, HELMUT A.J.
RAMPP, JUDITH

V.

UNITED STATES OF AMERICA
DEPARTMENT OF TREASURY
INTERNAL REVENUE SERVICE

HELMUT A.J. RAMPP,
Appellant

Appeal from the United States District Court
for the Middle District of Pennsylvania
(SCRANTON)
(D.C. Civil Action No. 89-0268)
District Judge: Hon. Edwin M. Kosik

Submitted under Third Circut Rule 12 (6)
5 July 1989
Before: Higginbotham, Mansmann and Cowen,
Circut Judges

JUDGEMENT ORDER

The government's motion for sanctions is denied. After consideration of all contentions raised by appellant, it is adjudged and ordered that the judgement of the District Court be and hereby is AFFIRMED. Costs taxed against appellant.

APPENDIX "B"

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUT

NO. 89-5259

HUNLOCK SAND & GRAVEL INC.
RAMPP, HELMUT A.J.,
RAMPP, JUDITH

v.

UNITED STATES OF AMERICA
DEPARTMENT OF TREASURY
INTERNAL REVENUE SERVICE

HELMUT A.J. RAMPP,
Appellant

(D.C. Civil Action No. 89-0268)

SUR PETITION FOR REHEARING

Present: Gibbons, Chief Judge, Higginbotham, Sloviter, Becker, Stapleton, Mannsman, Green--berg, Hutchinson, Scirica, Cowen, and Nygaard, Circut Judges.

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circut judges in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circut judges of the circut in regular service not having voted for rehearing by the panel and the court in banc, is denied.

By the court,

Circut Judge Higginbotham.

APPENDIX "C"

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUT

NO. 89-5259

HUNLOCK SAND & GRAVEL INC.
RAMPP, HELMUT A.J.,
RAMPP, JUDITH

V.

UNITED STATES OF AMERICA
DEPARTMENT OF TREASURY
INTERNAL REVENUE SERVICE

HELMUT A.J. RAMPP,
APPELLANT

Pursuant to Rule 41 (b) of the Federal Rules of Appellate Procedure, it is ORDERED that the issuance of the certified judgement in lieu of formal mandate in the above cause be, and it is hereby stayed until September 23, 1989.

Circut Judge Higginbotham.

Dated: August 28 1989

APPENDIX "D"

UNITED STATES CONSTITUTION AMMENDMENT 5

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

APPENDIX "E"

FEDERAL RULES OF CIVIL PROCEDURE
RULE # 12 (A)

Defenses and Objections - When and How Presented - By Pleading or Motion - Motion For Judgement on the Pleadings.

(a) When Presented. A defendant shall serve his answer within 20 days after the service of the summons and complaint upon him, except when service is made under rule # 4(e) and a different time is prescribed in the order of court under the statute of the United States or in the statute or rule of court of state. A party served with a pleading stating a cross claim against him shall serve an answer thereto within 20 days after the service upon him. The plaintiff shall serve his reply to a counter-claim in the answer within 20 days after service of the answer or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise

directs. The United States or an officer or agency thereof shall serve an answer to the complaint or to a crossclaim, or a reply to a counterclaim, within 60 days after the service upon the United States Attorney of the pleading in which the claim is asserted. The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court; (1) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action; (2) if the court grants a motion for a more definite statement the responsive pleading shall be served within 10 days after the service of the more definite statement.